IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

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O R D E R

State of Rajasthan & Anr.
Vs.
Shri Ramniwas & Anr.

S.B. CIVIL WRIT PETITION NO.2957/2002 UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 27th July, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Rameshwar Dave, Dy. Govt. Advocate for the petitioners.
Mr.J.Gehlot, for the respondents.

BY THE COURT

REPORTABLE

The State of Rajasthan in this writ petition has challenged the award dated 16th April, 2002 whereby the learned Labour Court Jodhpur while answering a reference on an industrial dispute declared the removal of respondent-workman, who was working on daily wages in the office of Assistant Engineer, Drilling & Hand-pump Sub-Division-I, PHED-Nagaur from service

on 01.10.1984 as illegal and directed the petitioners to reinstate the respondent-workman and treat his services to be continuous and pay 25% back wages from the date of reference till reinstatement.

The case of the respondent-workman before the learned Labour Court was that he was appointed as a labour on monthly wages of Rs.270/- by the Assistant Engineer, Drilling & Hand-pump Sub-Division-I, PHED-Nagaur on 21.12.1982. He thereafter continuously worked with them up to 30.09.1984. Suddenly his services were terminated on 01.10.1984 without showing any reason and without giving any charge-sheet. The respondent-workman had completed more than 240 days in the employment of management. The management did not comply with the mandatory provision of Section 25-F of the Industrial Disputes Act, 1947 while removing him from service. Neither did they give him any notice nor retrenchment compensation was paid to him at the time of removal. Several new employees were engaged after his removal and several other workmen who were junior to him were continued in service. The management did not prepare any seniority list as required by Rule 77 of the Industrial Disputes (Control) Rules and did not follow the principles of first come first go at the time of his removal. It was therefore prayed that removal of the respondent-workman be

declared illegal and being violative of Section 25-F of the Industrial Disputes Act and he should be held entitled for reinstatement with full back wages.

That the appellant contested the matter before the learned Labour Court and filed a reply to the statement of claim of the respondent-workman. It was denied that the respondent-workman was engaged on monthly wages of Rs.270/-. He was engaged by verbal order on 21.12.1982 @ Rs.8/- per day for managing articles in store. He worked with the management up to 30.09.1984 except on holidays and, therefore it was denied that he continuously worked from 21.12.1982 to 30.09.1984. When the work in store was completed the workman was informed in writing on 31.08.1984 that if he agreed, he could be engaged for running the machine in mechanical section but again on contract basis. When the petitioner did not accept that offer, he could not have been continued in service as his earlier appointment on contract basis had come to an end and he was informed accordingly. It was submitted that respondents did not fall within the definition of workman as he was engaged on contract basis and with the completion of work his appointment came to an end. There was thus no industrial dispute. It was therefore prayed that the claim of the respondent-workman may be rejected.

That while workman filed his own affidavit in support of his case, one T.D. Solanki, Assistant Engineer filed his affidavit in support of the case of management. They were allowed to be cross-examined. The workman filed only one certificate dated 21.12.1982 which was Exhibit-1.

The learned Labour Court examined the entire record and heard the arguments and finally answered the reference in the terms indicated above. Against this award of the learned Labour Court the State of Rajasthan has filed the present writ petition.

I have heard the arguments of Shri Rameshwar Dave, learned Dy. Government Advocate for the State and Shri Jagdish Gehlot, learned counsel for the respondents and perused the record of the case.

Shri Rameshwar Dave, learned Dy. Government Advocate argued that respondent-workman was engaged on contract basis for management of articles in store and with the completion of that work, his services became liable to be discontinued. He at that time was asked to give in writing his consent for doing the work of machine but he failed to give his consent. He was informed in writing on 31.08.1984 that the work in the store had been completed, therefore, his services were no more required.

Once when the work for which the respondent-workman was engaged was completed, he could not have been continued in service particularly when his appointment was made on contract basis. Shri Dave has also argued that those appointed on contract basis do not fall within the definition of workman and discontinuation of service of a workman is engaged on contract basis as a result of completion of work would not fall within the definition of retrenchment. Such categories of workman were covered under Section 2(00) (bb) of the Industrial Disputes Act who were excluded from purview of retrenchment. The management did not violate any of the provisions of Section 25-F of the Industrial Disputes Act and Rule 77 of the Industrial Disputes Rules. The petitioners have also not violated the provisions of Sections 25-F and 25-G of the Industrial Disputes Act. Moreover, the workman has not given any datas or details and not furnished any names to substantiate his allegation of non-compliance of the provisions of Sections 25-G and H. Shri Dave has argued that even if the case of the respondent-workman was accepted, though denied, he having been engaged on daily wages basis on 21.12.1982 and worked with the petitioners only up to 30.09.1984, this period hardly comes to one year and nine months, he was not entitled to reinstatement. In the facts of the present case, the learned Labour Court ought not to have directed reinstatement of the respondent particularly

when the work for which he was engaged had been completed. A long period of almost 18 years had gone by since the time of removal of the respondent when the award was passed by learned Labour Court. He has argued that this delay in passing of the award was solely attributable to the workmen because the reference on industrial dispute in the present case at his instance was made by the appropriate Government as late as 23.09.1997.

The learned Dy. Government Advocate has relied upon a Division Bench judgment of this Court in Arjun Singh & 4 Ors. vs. Labour Court, Jodhpur & Ors. reported in 2004 (4) WLC (Raj.) 145 and another Division Bench judgment of this Court in State of Rajasthan & Ors. vs. Rashid Mohammed reported in 2004 (5) WLC (Raj.) 463.

On the other hand, Shri Jagdish Gehlot appearing for the respondent-workman has argued that the respondent was not appointed on daily wage basis and that his appointment was made on monthly basis. He has submitted that the management did not produce any evidence or documents to show that the appointment of the respondent-workman was made on contract basis or on daily wages basis. He has denied that the delay in making reference was attributable to the respondent and has

argued that the workman has raised the dispute in the year 1993 before the Conciliation Officer who submitted the failure report in the year 1993. The learned Labour Court has rightly found that the retrenchment of the workman was made in complete violation of provisions of Section 25-F of the Industrial Disputes Act. The learned Labour Court was thus fully justified in directing reinstatement of the respondent with 25% back wages.

Shri Gehlot in support of his case has relied upon an un-reported decision of this Court in S.B. Civil Writ Petition No.3836/1989 (M/s. Ganganagar Sugar Mills Ltd. vs. The State of Rajasthan & Ors.) and another un-reported decision of the Hon'ble Supreme Court in Civil Appeal No.1592/2004 (Suresh Bharti vs. State of Rajasthan) decided on 12.03.2005 and yet another decision of this Court in the case of Sawaimadhopur through its Managing-Director & Anr. vs. Om Prakash Sharma & Anr. reported in 2002 (2) WLN 167. He has argued that the writ petition filed by the petitioner is liable to be dismissed with costs.

I have bestowed my anxious consideration to the arguments advanced by both the learned counsel and perused the record.

Some basic facts which have not been disputed and cannot

be disputed are that the respondent-workman was appointed on 21.12.1982 and worked with the respondent only up to 30.09.1984. His total period of work thus comes to one year and 10 months. Reference in the present case was made by the appropriate Government as delayed as 23.09.1997 and by that time period of 13 years had already elapsed form the date of retrenchment of the workman. The learned Labour Court itself took almost five years time to answer the reference of the industrial dispute and finally passed the award on 16.04.2002.

Even if the dispute whether the mode of payment of wages of workman was on daily basis or monthly or whether the appointment of the respondent was made for a particular work which came to an end is not gone into, the fact remains that the appointment of the respondent was not made by any acceptable mode of recruitment so as to describe it as a regular appointment.

The learned Labour Court has passed the award after an enormous delay of eighteen years from the date of retrenchment. Out of which, even if the case of respondent workman is accepted that he approached the conciliation officer in the year 1993, yet there is no explanation whatsoever why he took as long as nine years in approaching the conciliation officer.

It appears that he was not vigilant about his rights and failed to timely avail appropriate remedy for redressal of his grievance.

The judgment of this Court in M/s Ganganagr Sugar Mills (supra) relied upon by the learned counsel for the respondents arises out of a case wherein the workman upon his selection was initially appointed on 01.10.1953 and after inquiry he was dismissed from service on 21.07.1964. He moved an application before the cancellation officer after about 14 years of his dismissal, on the basis of which reference came to be made to the Labour Court. The learned Labour Court came to the conclusion that the dismissal of workman was illegal and therefore, directed his reinstatement. When the matter came to this Court on challenge being made by the workman to the award passed by the learned Labour Court, this Court by aforesaid judgment while upholding the award directed that the workman would be entitled to back wages from the date of dismissal till the date he rejoined his services. Another judgment of the Hon'ble Supreme Court relied upon by learned counsel for the respondents is the case of Suresh Bharti vs. State of Rajasthan (supra) in which despite delay of nine years in making reference, the learned Labour Court directed reinstatement with only 25% back wages. This Court however, modified the award and directed payment of lump sum compensation of Rs.25,000/-

in place of reinstatement. The Hon'ble Supreme Court held that when the award of the learned Labour Court was upheld by this Court on the ground of infraction of Section 25-F of the Industrial Disputes Act, there was no justification for this Court to interfere in the award passed by the learned Labour Court. Similarly in the case of Sawaimadhopur & Tonk Zila Dugdh Utpadak Sahakari Sangh Ltd. vs. Om Prakash Sharma & Anr. (supra) the Division Bench of this Court refused to interfere with the award passed by the learned Labour Court on the basis of delay of seven years in making reference and on violation of Section 25-F of the Industrial Disputes Act the workmen was held to be entitled to reinstatement with 40% back wages.

Coming now to the case law cited by the learned Dy. Government Advocate, in the first cited judgment in State of Rajasthan & Ors. vs. Rashid Mohammad (supra) the Division Bench of this Court was dealing with the case where the respondent Rashid Mohammad was appointed as a Guard on daily wages basis on 01.02.1990 and was finally removed on 17.05.1994. The Division Bench while taking into consideration the facts that already nine years have elapsed, modified the judgment of the learned Single Judge by directing that instead of reinstatement, the petitioner would be entitled to a lump sum amount of Rs.50,000/- as compensation for full and final

settlement of all his claims. In doing so the learned Division Bench of this Court relied upon the various judgments of Hon'ble Supreme Court which may be summarized as under:-

> **"(1)** In **Hindustan Tin Works Pvt. Ltd. Vs. Employees of Hindustan Tin Works Pvt. Ltd.** AIR 1979 SC 95, the Hon'ble Supreme Court held that the Court has discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make the reinstatement inexpedient or improper.
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> **(2).** In **Chandu Lal Vs. The management of M/s. PAN American World Airways,** AIR 1985 SC 1128, the Apex Court, instead of granting the relief of reinstatement, granted compensation.
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> **(3).** In **Gujarat State Road Transport Corporation & Anr. Vs. Malu Amra,** AIR 1994 SC 112, the Hon'ble Supreme Court considered the aspect of long lapse of time between the termination and the date of Award and held that the grant of compensation in lieu of reinstatement was proper.
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> **(4).** In **Sain Steel Products Vs. Naipal Singh & ors.,** AIR 2001 SCW 2426, the Hon'ble Apex Court granted a sum of Rs.50,000/- to the workman in lieu of reinstatement or back wages on the ground that there had been an inordinate delay as the services had been terminated long back.
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> **(5).** In **O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. & Ors.,** (1986) 4 SCC 337, the Hon'ble Supreme Court propounded the formula to award compensation equivalent to 3.33 years' salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant therein, to be a reasonable amount to be awarded in lieu of reinstatement

> as the appellant therein had served for eight years.
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> **(6).** In **Rolston Johan Vs. Central Government Industrial Tribunal and Labour Court & Ors.,** AIR 1994 SC 131, the Hon'ble Supreme Court granted a lump sum amount of Rs.50,000/- as compensation in full and final settlement of the claim and in lieu of reinstatement and consequential benefits to the workman."

In another judgment relied upon by the learned Dy. Government Advocate in Arjun Singh & 4 Ors. vs. Labour Court, Jodhpur & Ors. (supra), the Division Bench of this Court was dealing with a case in which the workman Arjun Singh was appointed on 01.01.1988 and was removed from service on 01.04.1990. Apart from this, similar case of two more workmen was also considered therein. The matter came to the learned Labour Court on a reference being made to it by the appropriate Government. The Labour Court found that the termination of workman was in violation of Section 25-F of the Industrial Disputes Act. However, instead of directing reinstatement of the workman it granted compensation in lieu of reinstatement. While dealing with the said case, the Division Bench of this Court made the following observations:-

> "**5.** The appellants did not go through a process of selection and were merely appointed on daily wages basis. The time lag in each case between the passing of the award and the date of termination is quite a substantial one. Again

between date of termination of services of the appellants and as of now several years have3 gone by. In the circumstances the Labour Court and the learned Single Judge were right in not foisting the appellant on the employer after such long spells of time. The appellants cannot be directed to be reinstated now as they have been out of touch with their respective jobs of long. It is well known that faculties rust when they are not used for long. An employee who is out of job for number of years, loses his proficiency, productivity and efficiency. In case the appellants are directed to be reinstated after several years it will lead to complex situations. Not only question of their seniority, promotion and emoluments would arise, it will also affect the seniority and chances of promotion of employees who have been working continuously with respondents after the termination of the services of the appellants.

6. We are conscious of the fact that the normal rule is to direct reinstatement of a workman whose services have been terminated in violation of the industrial law, but reinstatement cannot be directed in every case. The question whether an employee should be reinstated or not depends upon various factors viz. (1) The nature of employment; (2) the period between the date of appointment and date of termination i.e. length of service; (3) the period between the date of termination and date of award; (4) the period between the date of termination and the conclusion of the proceedings. In case a person is appointed for a short period of time without making him to through a process of selection and the gap between the date of termination and the award/conclusion of proceedings is a large one, ordinarily the employee should be awarded compensation in lieu of reinstatement when it is found that his termination was in violation of the provisions of Section 25F of the Industrial Disputes Act."

The Hon'ble Supreme Court in the case of Ratan Singh Vs. Union of India & Anr. reported in (1997) 11 SCC 396, wherein nearly 20 years had elapsed from the date when the services of the workman were terminated in violation of Section 25-F of the Industrial Disputes Act, while directing the payment of compensation in lieu of reinstatement observed as under:-

> "The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs.25,000/- be paid to the appellant in lieu of compensation for back wages as well as reinstatement."

In the present case also on given facts it would be evident that (i) the respondent worked with the petitioners for a short duration of one year and nine months only (ii) reference of the dispute to the labour court was made enormously delayed after about thirteen years (iii) award was passed by the labour court after almost eighteen years from the date of retrenchment and (iv) a long period of twenty two years has gone by now when this writ petition is being disposed of. In these circumstances, it would not be just and proper to direct reinstatement of the

respondent-workman.

In view of what has been discussed above, I find that it is a fit case in which instead of reinstatement, respondent-workman ought to be paid a lump sum compensation. I therefore set aside the award passed by the learned Labour Court and direct that in lieu of reinstatement he shall be paid a sum of Rs.50,000/- as lump sum compensation within a period of two months from the date of receipt of copy of this judgment.

The writ petition is accordingly disposed of with no order as to costs.

[MOHAMMAD RAFIQ],J.

Ashwini/-